

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE APPLICATION OF HIGH
POINT S.A.R.L.,

Applicant.

No. C10-0273 SBA (BZ)

**ORDER DENYING FUTUREWEI'S
MOTION TO QUASH**

IT IS HEREBY ORDERED that FutureWei's Motion to Quash High point's subpoena is **DENIED**. The Court finds no need for argument.

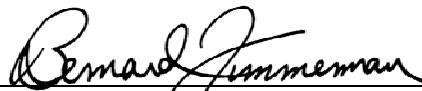
To the extent the subpoena is ambiguous, the Court accepts High Point's limitation that it seeks "discovery only relating to those core network products Huawei supplied to KPN, which form the basis of KPN's non-infringement defense." Opposition page 5, Line 8-9. Inasmuch as FutureWei is not a party to that litigation, High Point shall identify the products which form the basis of KPN's non-infringement defense.

1 FutureWei need not produce any documents which are only
2 in the possession of Huawei in China, unless it has custody or
3 control over those documents. Ordinarily, a party seeking to
4 compel a subsidiary to produce the documents of a foreign
5 parent has the burden of showing that the documents are within
6 the subsidiary's control, which generally means that the
7 subsidiary has the legal right to obtain the documents upon
8 demand. See Linde v. Arab Bank, PLC, 262 F.R.D. 136, 141,
9 (E.D.N.Y. 2009). High Point has not met its burden of showing
10 that FutureWei has control over Huawei documents that are
11 located in China. But if FutureWei has that right, it shall
12 produce the documents.

13 To the extent that the documents sought from FutureWei
14 contain confidential or proprietary information, they shall be
15 produced pursuant to paragraph 4 of Judge Armstrong's Order
16 dated March 3, 2010.

17 It is further **ORDERED** that High Point shall identify the
18 relevant products by **April 9, 2010** and FutureWei shall
19 respond to the subpoena by **April 23, 2010**.

20 Dated: April 7, 2010

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22 Bernard Zimmerman
23 United States Magistrate Judge

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